

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

USDC Docket Number : 05-cv-11897

Massamont Insurance Agency, Inc.,

v.

Utica Mutual Insurance Company

CLERK'S CERTIFICATE

I, Sarah A. Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents numbered:

1-35

and contained in Volume(s) I are the original or electronically filed pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 10/13/2006.

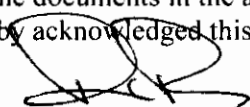
In testimony whereof, I hereunto set my hand and affix the seal of this Court on October 26, 2006.

Sarah A Thornton, Clerk of Court

By:

Deputy Clerk

Receipt of the documents in the above entitled case is hereby acknowledged this date: 10/30/06.


Deputy Clerk, US Court of Appeals

Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: _____

APPEAL

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:05-cv-11897-WGY**

Massamont Insurance Agency, Inc. v. Utica Mutual
Insurance Company
Assigned to: Judge William G. Young
Cause: 28:1332 Diversity-Insurance Contract

Date Filed: 09/19/2005
Jury Demand: Defendant
Nature of Suit: 110 Insurance
Jurisdiction: Federal Question

Plaintiff

Massamont Insurance Agency, Inc.

represented by **John J. Davis**
Pierce, Davis & Perritano, LLP
Ten Winthrop Square
Boston, MA 02110-1257
617-350-0950
Fax: 617-350-7760
Email: jdavis@piercedavis.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Utica Mutual Insurance Company

represented by **Erin K. Higgins**
Conn, Kavanaugh, Rosenthal, Peisch &
Ford, LLP
Ten Post Office Square
4th Floor
Boston, MA 02109
617-482-8200
Fax: 617-482-6444
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ATTORNEY TO BE NOTICED

Jacob A Labovitz
Conn Kavanaugh Rosenthal Peisch &
Ford, LLP
Ten Post Office Square
Boston, MA 02109
617-348-8215
Fax: 617-482-6444
Email: jlabovitz@ckrpf.com
ATTORNEY TO BE NOTICED

Mediator

Magistrate Judge Judith G. Dein

TERMINATED: 05/31/2006

Date Filed	#	Docket Text
09/19/2005	<u>1</u>	COMPLAINT against Utica Mutual Insurance Company Filing fee: \$ 250, receipt number 66992, filed by Massamont Insurance Agency, Inc.. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D# <u>5</u> Civil Cover Sheet)(Bell, Marie) (Entered: 09/21/2005)
09/20/2005	<u>2</u>	Summons Issued as to Utica Mutual Insurance Company. (Bell, Marie) (Entered: 09/21/2005)
09/20/2005	<u>3</u>	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Bowler. (Bell, Marie) (Entered: 09/21/2005)
10/20/2005	<u>2</u>	AFFIDAVIT OF SERVICE Executed by Massamont Insurance Agency, Inc.. Utica Mutual Insurance Company served on 10/13/2005, answer due 11/2/2005. Acknowledgement filed by Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 10/20/2005)
11/02/2005	<u>3</u>	NOTICE of Appearance by Russell F. Conn on behalf of Utica Mutual Insurance Company (Higgins, Erin) Modified on 1/17/2006 (Paine, Matthew). (Entered: 11/02/2005)
11/02/2005	<u>4</u>	NOTICE of Appearance by Erin K. Higgins on behalf of Utica Mutual Insurance Company (Higgins, Erin) (Entered: 11/02/2005)
11/02/2005	<u>5</u>	ANSWER to Complaint with Jury Demand by Utica Mutual Insurance Company.(Higgins, Erin) (Entered: 11/02/2005)
11/02/2005	<u>6</u>	CORPORATE DISCLOSURE STATEMENT by Utica Mutual Insurance Company. (Higgins, Erin) (Entered: 11/02/2005)
11/10/2005	<u>7</u>	NOTICE of Scheduling Conference Scheduling Conference set for 12/19/2005 02:00 PM in Courtroom 18 before Chief Judge William G. Young. (Smith, Bonnie) (Entered: 11/10/2005)
12/01/2005	<u>8</u>	MOTION to Bifurcate <i>Plaintiff's Chapter 93A and 176D Claims, and to Stay Discovery Pending Disposition of Plaintiff's Coverage Claims</i> by Utica Mutual Insurance Company. (Attachments: # <u>1</u> # <u>2</u>)(Higgins, Erin) (Entered: 12/01/2005)
12/12/2005	<u>9</u>	CERTIFICATE OF CONSULTATION <i>Local Rule 16.1 Certification</i> by John J. Davis on behalf of Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 12/12/2005)
12/12/2005	<u>10</u>	CERTIFICATE OF CONSULTATION <i>Pursuant to L.R. 16.1(D)(3)</i> by Erin K. Higgins on behalf of Utica Mutual Insurance Company. (Higgins, Erin) (Entered: 12/12/2005)
12/12/2005	<u>11</u>	JOINT STATEMENT re scheduling conference. (Higgins, Erin) (Entered: 12/12/2005)

12/19/2005	●	ElectronicClerk's Notes for proceedings held before Judge William G. Young : Scheduling Conference held on 12/19/2005. The Court explains the requirements of the session and inquires as to whether the parties want to proceed before a Magistrate Judge. Case to go to ADR as of May,06 Final Pretrial Conference set for NO SOONER THAN 11/6/2006 02:00 PM before Chief Judge William G. Young. Jury Trial set for RUNNING TRIAL LIST AS OF 12/4/2006 09:00 AM before Chief Judge William G. Young. (Smith, Bonnie) (Entered: 12/20/2005)
12/20/2005	●12	Judge William G. Young : ORDER AS MODIFIED entered. re <u>11</u> JOINT STATEMENT re scheduling conference Discovery to be completed by 7/31/2006. Dispositive Motions due by 9/14/2006.(Smith, Bonnie) (Entered: 12/20/2005)
01/04/2006	●	Judge William G. Young : ELECTRONIC ORDER entered Motion 8 Denied. "If the declaratory judgment action requires no discovery, the action is ripe for submission as a case stated." (Paine, Matthew) (Entered: 01/09/2006)
01/17/2006	●13	NOTICE of Appearance by Jacob A Labovitz on behalf of Utica Mutual Insurance Company (Labovitz, Jacob) (Entered: 01/17/2006)
04/19/2006	●14	REFERRING CASE to Alternative Dispute Resolution.(Paine, Matthew) (Entered: 04/19/2006)
04/21/2006	●	Electronic Notice of assignment to ADR Provider. Magistrate Judge Judith G. Dein appointed. The Court will contact counsel with regard to scheduling.(Tyler, Rebecca) (Entered: 04/21/2006)
04/25/2006	●15	NOTICE of and ORDER regarding ADR Conference: Mediation set for 5/31/2006 10:00 AM in Courtroom 15 before Magistrate Judge Judith G. Dein.(Dambrosio, Jolyne) (Entered: 04/25/2006)
05/05/2006	●16	MOTION for Partial Summary Judgment <i>and Request for Oral Argument Prusuant to Local Rule 7.1(D)</i> by Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 05/05/2006)
05/05/2006	●17	MEMORANDUM in Support re <u>16</u> MOTION for Partial Summary Judgment <i>and Request for Oral Argument Prusuant to Local Rule 7.1(D)</i> filed by Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 05/05/2006)
05/05/2006	●18	Statement of Material Facts L.R. 56.1 re <u>16</u> MOTION for Partial Summary Judgment <i>and Request for Oral Argument Prusuant to Local Rule 7.1(D)</i> filed by Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 05/05/2006)
05/05/2006	●19	AFFIDAVIT in Support re <u>16</u> MOTION for Partial Summary Judgment <i>and Request for Oral Argument Prusuant to Local Rule 7.1(D)</i> filed by Massamont Insurance Agency, Inc.. (Attachments: # (1) Affidavit Part 2 of Affidavit of Hilbert Schenck II)(Davis, John) Additional attachment(s) added on 5/10/2006 (Paine, Matthew). (Entered: 05/05/2006)
05/08/2006	●20	MOTION for Summary Judgment by Utica Mutual Insurance Company.

		(Labovitz, Jacob) (Entered: 05/08/2006)
05/08/2006	<u>21</u>	MEMORANDUM in Support re <u>20</u> MOTION for Summary Judgment filed by Utica Mutual Insurance Company. (Labovitz, Jacob) (Entered: 05/08/2006)
05/08/2006	<u>22</u>	APPENDIX/EXHIBIT re <u>20</u> MOTION for Summary Judgment, <u>21</u> Memorandum in Support of Motion (<i>Table of Authorities</i>) by Utica Mutual Insurance Company. (Labovitz, Jacob) (Entered: 05/08/2006)
05/08/2006	<u>23</u>	STATEMENT of facts re <u>20</u> MOTION for Summary Judgment <i>Filed by Utica Mutual Insurance Company</i> . (Attachments: # <u>1</u> Affidavit Jacob A. Labovitz (With Attached Exhibits - I)# <u>2</u> Affidavit Jacob A. Labovitz (With Attached Exhibits - II))(Labovitz, Jacob) (Entered: 05/08/2006)
05/10/2006		Notice of Correction to Docket made by Court Staff. Correction: <u>19</u> AFFIDAVIT in Support re <u>16</u> MOTION for Partial Summary Judgment Corrected Because: The Exhibits to the Affidavit of Hilbert Schenck II Were Not Filed As Separate PDF Attachments to the Affidavit. (Paine, Matthew) (Entered: 05/10/2006)
05/19/2006		NOTICE re Opposition to <u>16</u> MOTION for Partial Summary Judgment <i>and Request for Oral Argument Prusuant to Local Rule 7.1(D)</i> , <u>20</u> Opposition to MOTION for Summary Judgment. The defendant's Oppositon is due by May 26, 2006 and the Plaintiff;s Opposition is due by May 30, 2006. (Smith, Bonnie) (Entered: 05/19/2006)
05/26/2006	<u>24</u>	MEMORANDUM in Opposition re <u>16</u> MOTION for Partial Summary Judgment <i>and Request for Oral Argument Prusuant to Local Rule 7.1(D)</i> filed by Utica Mutual Insurance Company. (Labovitz, Jacob) (Entered: 05/26/2006)
05/26/2006	<u>25</u>	Response by Utica Mutual Insurance Company to <u>18</u> Statement of Material Facts L.R. 56.1 <i>of Massamont Insurance Agency, Inc..</i> (Labovitz, Jacob) (Entered: 05/26/2006)
05/30/2006	<u>26</u>	MEMORANDUM in Opposition re <u>20</u> MOTION for Summary Judgment <i>of Utica Mutual Insurance Company</i> filed by Massamont Insurance Agency, Inc.. (Attachments: # <u>1</u> Attachment 1 - Objections and Responses of Defendant Utica Mutual Ins. Co# <u>2</u> Attachment 2 - Plaintiff's Answers to Defendant's 1st Set of Interrogatories)(Davis, John) (Entered: 05/30/2006)
05/30/2006	<u>27</u>	Opposition re <u>20</u> MOTION for Summary Judgment <i>Utica Mutual Insurance Company's Statement of Undisputed Facts</i> filed by Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 05/30/2006)
05/31/2006	<u>28</u>	REPORT of Alternative Dispute Resolution Provider. (Dambrosio, Jolyne) (Entered: 05/31/2006)
06/13/2006	<u>29</u>	Emergency MOTION for Protective Order by Utica Mutual Insurance Company. (Attachments: # <u>1</u> Exhibit Scheduling Order)(Labovitz, Jacob) (Entered: 06/13/2006)

06/14/2006	● <u>30</u>	Opposition re <u>29</u> Emergency MOTION for Protective Order <i>Or, In the Alternative, Request for Leave to Extend Discovery Deadlines -- and Request for Oral Argument</i> filed by Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 06/14/2006)
06/14/2006	●	ELECTRONIC NOTICE of Hearing on Motion <u>16</u> MOTION for Partial Summary Judgment <i>and Request for Oral Argument Prusuant to Local Rule 7.1(D)</i> , <u>20</u> MOTION for Summary Judgment: Motion Hearing set for 6/29/2006 02:00 PM in Courtroom 18 before Judge William G. Young. (Smith, Bonnie) (Entered: 06/14/2006)
06/14/2006	●	Judge William G. Young : Electronic ORDER entered GRANTING <u>29</u> Motion for Protective Order by Utica Mutual Insurance Company. (Paine, Matthew) (Entered: 06/14/2006)
06/15/2006	● <u>31</u>	Emergency MOTION for Extension of Time to Complete Discovery by Massamont Insurance Agency, Inc..(Davis, John) (Entered: 06/15/2006)
06/15/2006	● <u>32</u>	MEMORANDUM in Support re <u>31</u> Emergency MOTION for Extension of Time to Complete Discovery filed by Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 06/15/2006)
06/19/2006	● <u>33</u>	MEMORANDUM in Opposition re <u>31</u> Emergency MOTION for Extension of Time to Complete Discovery filed by Utica Mutual Insurance Company. (Attachments: # <u>1</u> Exhibit)(Labovitz, Jacob) (Entered: 06/19/2006)
06/20/2006	●	Judge William G. Young : Electronic ORDER entered DENYING <u>31</u> Emergency Motion for Extension of Time to Complete Discovery. (Paine, Matthew) (Entered: 06/20/2006)
06/29/2006	●	ElectronicClerk's Notes for proceedings held before Judge William G. Young : Motion Hearing held on 7/3/2006 re <u>16</u> MOTION for Partial Summary Judgment <i>and Request for Oral Argument Prusuant to Local Rule 7.1(D)</i> filed by Massamont Insurance Agency, Inc., <u>20</u> MOTION for Summary Judgment filed by Utica Mutual Insurance Company,. After hearing the Motions are taken UNDER ADVISEMENT (Court Reporter Womack.) (Entered: 07/03/2006)
09/15/2006	● <u>34</u>	Judge William G. Young : ORDER entered. "Because Massamont's Breach Did Not Arise in the Performance or Nonperformance of a 'Professional Service', the Court Need Not Address Whether Massamont's Breach Constituted a 'Wrongful Act' Under the Policy. Accordingly, Utica's Motion for Summary Judgment Doc. No. <u>20</u> is hereby ALLOWED; massamont's Motion for Summary Judgment Doc. No. <u>16</u> is hereby DENIED. Judgment for Utica Shall Enter. (Paine, Matthew) (Entered: 09/15/2006)
09/15/2006	●	Judge William G. Young : Electronic ORDER entered. JUDGMENT in favor of Utica. (Paine, Matthew) (Entered: 09/15/2006)
10/13/2006	● <u>35</u>	NOTICE OF APPEAL as to <u>34</u> Order,, Judgment by Massamont Insurance Agency, Inc.. \$ 455 NOTICE TO COUNSEL: A Transcript

		Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov/clerks/transcript.htm MUST be completed and submitted to the Court of Appeals. Appeal Record due by 11/2/2006. (Davis, John) (Entered: 10/13/2006)
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